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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**D8**

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass, 3/F

Washington, D.C. 20536



**JUL 18 2003**

FILE: LIN 02 186 53702

Office: NEBRASKA SERVICE CENTER

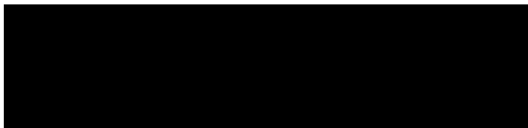
Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:




**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a dance studio. The beneficiary is a ballroom dancer. The petitioner seeks O-1 classification of the beneficiary, as an alien with extraordinary ability in athletics under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), in order to employ him in the United States as a "ballroom dance instructor" for a period of three years at an annual salary of \$25,000.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien with extraordinary ability in athletics.

On appeal, counsel for the petitioner argues that the petition was denied in error.

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

8 C.F.R. §214.2(o)(3)(ii) defines, in pertinent part:

*Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.*

8 C.F.R. §214.2(o)(3)(iii) states, in pertinent part, that:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:*

(A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or

(B) At least three of the following forms of documentation:

(1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

(3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;

(4) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

8 C.F.R. § 214.2(o)(5)(i)(A) requires, in pertinent part:

Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for O-1 or O-2 classification can be approved.

The beneficiary in this matter is a 22-year old citizen of Armenia. The record shows that the beneficiary has placed in dance competitions.

The director noted that much of the record focuses on the beneficiary's achievements as a dance competitor rather than as a dance instructor. The director concluded that the evidence does not establish that the beneficiary has sustained acclaim as a dance instructor.

On appeal, counsel asserts that the criteria for evaluating a dance competitor and a dance instructor are the same.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial of the petition. The record is insufficient to establish that the beneficiary is an alien with extraordinary ability in athletics.

First, there is no evidence that the beneficiary has received an award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). Nor is the record persuasive in demonstrating that the beneficiary met at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

As evidence that the beneficiary satisfies criterion number one, the petitioner provided the Bureau with a translated letter stating that the beneficiary was the National Ballroom Dance Champion of Armenia in 1999-2000, and four translated diplomas indicating that the beneficiary placed in three categories of the Samuel Vardanian Commemorative Competition in 1997 and in one category in the International Open Latin Competition of Armenia in 1998. Although the petitioner submitted a letter from the president of American Ballroom Company that describes the significance of one of these awards, the petitioner failed to establish the significance of all the awards. It is further noted that there is a discrepancy in the evidence between the American Ballroom Company's president's assertion that the beneficiary won the National Ballroom Dance Championship in two separate years, and the translated diploma indicating that the beneficiary won that competition once. The beneficiary does not satisfy this criterion.

No evidence was submitted in relation to criterion number two.

Although the record contains evidence of three published articles in media about the work of the alien and his dance partner, the petitioner failed to establish that these articles were published in major media. Moreover, the petitioner has not provided any information regarding the circulation or reputation of these publications. The petitioner failed to establish that the beneficiary satisfied criterion number three.

The petitioner asserts that the beneficiary satisfies criterion number four by virtue of his certification as a judge of international dance competitions. The petitioner failed to establish that the beneficiary has in fact judged the work of others in the same or an allied field of specialization.

No evidence was provided in relation to criteria numbers five, six, seven or eight.

On appeal, counsel asserts that the criteria for evaluating a dance competitor are the same as that for a dance instructor. Counsel's argument is not persuasive. In any event, the record is insufficient to establish that the beneficiary satisfies the criteria as a dance competitor.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.